

EXHIBIT C

1 MICHAEL A. KELLY (SB #71460)
mkelly@walkuplawoffice.com
2 KHALDOUN A. BAGHDADI (SB #190111)
kbaghdadi@walkuplawoffice.com
3 **WALKUP, MELODIA, KELLY &**
SCHOENBERGER
4 650 California Street, 26th Floor
San Francisco, CA 94108
5 Telephone: (415) 981-7210

6 FRANK M. PITRE (SBN 100077)
fpitre@cpmlegal.com
7 ALISON E. CORDOVA (SBN 284942)
acordova@cpmlegal.com
8 **COTCHETT, PITRE & McCARTHY**
San Francisco Airport Office Center
9 840 Malcolm Road, Suite 200
Burlingame, CA 94010
10 Telephone: (650) 697-6000

11 STEVEN SKIKOS (SB #148110)
sskikos@skikos.com
12 **SKIKOS, CRAWFORD, ET AL.**
1 Sansome Street, Ste 2830
13 San Francisco, CA 94104
Telephone: (415) 546-7300

14 **ON BEHALF OF DIRECT PLAINTIFFS**

EVAN R. CHESLER (*pro hac vice*)
echesler@cravath.com
TIMOTHY G. CAMERON (*pro hac vice*)
tcameron@cravath.com
KEVIN J. ORSINI (*pro hac vice*)
korsini@cravath.com
CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, NY 10019
Telephone: (212) 474-1000

ON BEHALF OF DEFENDANTS

CRAIG S. SIMON (SB #78158)
csimon@bergerkahn.com
BERGER KAHN, A Law Corporation
1 Park Plaza, Suite 340
Irvine, CA 92614
Telephone: (949) 474-1880

ON BEHALF OF SUBROGATION PLAINTIFFS

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF SAN FRANCISCO

18 Coordination Proceeding
Special Title (Rule 3.550)

19 CALIFORNIA NORTH BAY FIRE CASES
20
21
22
23

JCCP No. 4955

**JOINT SUBMISSION RE PROPOSED
CASE MANAGEMENT ORDERS 5 AND 6
RE INDIVIDUAL CASES INCLUDING:
CMO COMPLIANCE, CASE SPECIFIC
DISCOVERY, PRODUCTION OF CLAIM
FILES, AND TRIAL SELECTION AND
PREFERENCE MOTIONS**

**Assigned for All Purposes to:
Hon. Curtis E.A. Karnow, Dept. 304**

26 After meeting and conferring pursuant to California Rules of Court, Rules 3.724 and 3.727,
27 Plaintiffs and Defendants Pacific Gas and Electric Company and PG&E Corporation (collectively,
28 "PG&E") hereby jointly submit this Joint Submission and Proposed Case Management Order

1 Number Five relating to issues involving Individual Plaintiffs (See CMO 1.A.1) including
2 compliance with both CMO 1 and CMO 2, Case Specific Discovery, Production of Subrogation
3 Claim Files, and Trial Selection.

4 **I. PROCEDURE FOR IMPROVING THE TRACKING OF COMPLIANCE WITH**
5 **CASE FILING REQUIREMENTS**

6 **A. Application to All Cases and Counsel**

7 These provisions apply to any Individual Plaintiff whose case has been transferred to
8 JCCP 4955 and to any Individual Plaintiff whose case is transferred to JCCP 4955 in the future.

9 **B. CMO 1 Requirements: Notice of Adoption/Short Form Complaint**

10 On March 6, 2018, this Court entered CMO 1 by agreement of the parties. Pursuant to
11 CMO 1, the Individual Plaintiffs filed the Master Complaint on March 12, 2018. On March 16,
12 2018, the Defendants filed their Master Answer. CMO 1 established the proper procedures in
13 JCCP 4995 for filing and serving the Notice of Adoption of the Master Complaint (pp. 11-14).

14 Plaintiffs' Liaison has engaged in extensive outreach and communication and has collected
15 information from each of the known law firms representing plaintiffs whose cases are coordinated
16 in JCCP 4955. To date, those firms have identified more than 3,200 individual plaintiffs who are
17 a party to a lawsuit against PG&E alleging damages related to one of the North Bay Fires.
18 Plaintiffs' Liaison continues to receive responses from counsel identifying new plaintiffs.
19 Plaintiffs' Liaison collects this data in order to assess each primary counsel's compliance with
20 CMO 1, which requires service of either a Short Form Complaint or a Notice of Adoption, and to
21 provide reports to this Court regarding compliance.

22 In order to track compliance with Case Management Orders, including CMO 1, the
23 Individual Plaintiffs retained BrownGreer PLC ("BrownGreer") to manage and control all of the
24 case-specific data relating to JCCP 4995. Under the supervision of Individual Plaintiffs' Lead and
25 Liaison counsel, BrownGreer has reviewed and uploaded all of the Notices of Adoption and Short
26 Form Complaints into a database, referred to hereinafter as the BrownGreer Portal.

27 Each Individual Plaintiff with a Short Form Complaint or Notice of Adoption has been
28 given a unique control number, which has been connected to a particular file. The BrownGreer

1 Portal has and will continue to assist the Court with monitoring compliance with Case
2 Management Orders 1 and 2. To date, 3,100 plaintiffs (99%) have complied with CMO 1 by
3 serving a Short Form Complaint (“SFC”) or Notice of Adoption (“NOA”).

4 In the interests of maintaining an orderly and complete list of Plaintiffs who have adopted
5 the Master Complaint for the benefit of the Court, Individual Plaintiffs propose that BrownGreer
6 provide a regular Notice of Adoption Report to the Court. This report will include the name of
7 each plaintiff who has adopted the Master Complaint by virtue of serving an NOA or by filing an
8 SFC, as well as: the name of the primary law firm representing the plaintiff; the fire or fires
9 alleged to have caused injuries to the plaintiff or plaintiff household; the docket case number; and
10 the NOA/SFC case number, hereinafter “Household Number”.¹ The provision of these Notice of
11 Adoption Reports will not obviate, limit, or otherwise affect plaintiffs’ pleading obligations under
12 CMO 1.

13 To assist lead counsel in tracking information pertaining to compliance with case filing
14 requirements, going forward, any individual plaintiff who seeks to initiate litigation may do so
15 initially through the BrownGreer Portal, which provides the means to submit basic individual
16 plaintiff information as well as an interactive form for the preparation of an NOA or an SFC. The
17 BrownGreer Portal will also assign the Individual Plaintiff(s) with a Household Number, which
18 shall be used on the SFC and NOA of the Master Complaint.

19 **II. CASE MANAGEMENT ORDER TWO: LIABILITY DISCOVERY FROM**
20 **INDIVIDUAL PLAINTIFFS**

21 **A. CMO 2 – Rules Applicable to Cases Added to the JCCP**

22 The parties have agreed that for new cases added to the JCCP, each Individual Plaintiff
23 shall complete and upload to the BrownGreer Portal the CMO 2 Questionnaire within 30 days
24 from the order granting coordination of their case. Then, for all new cases, BrownGreer will
25 present to the Defendants and to Individual Plaintiffs’ leadership the responsive information in a
26

27 ¹ Household Number will be used synonymously with the Notice of Adoption Complaint Number.
28 This unique identifier will be used to capture the claims of all plaintiffs who file together under
one NOA/SFC per CMO 1, including individuals, as well as business entities.

CMO 2 report every sixty (60) days. The next CMO 2 report shall be due on January 14, 2019.

B. CMO 2 – Plaintiffs as Witnesses

On November 16th, Plaintiffs’ leadership provided a set of the collected CMO 2 responses to PG&E. PG&E has requested depositions of individual plaintiffs who claimed to have witnessed what could be the ignition of a particular fire. The Individual Plaintiffs’ leadership requested that PG&E review the interrogatory responses and coordinate with Individual Plaintiffs’ leadership and representing counsel prior to requesting the deposition of an individual plaintiff.

III. DAMAGES INFORMATION FROM SUBROGATION PLAINTIFFS

CMO 1 contemplates the production of subrogation files/claim files on a rolling basis (see CMO 1, pp. 16-17). The parties have met and conferred regarding a schedule governing the production of claim files and payment data from Subrogating Plaintiffs. The following procedures have been agreed to by the parties and will govern the production of claim files to the Individual Plaintiffs and to PG&E.

A. Retained Individual Plaintiffs—Insurance Information Sharing

Each Counsel or Law Firm with a case coordinated in JCCP 4955 shall submit within 10 days of the entry of CMO 5 a List of Individual Plaintiffs, whether filed or unfilled, who have retained Counsel or Law Firm in conjunction with claims arising out of a fire that is subject to JCCP 4955. This List shall include:

- The first name and last name of all adult members of each household (household defined as a group of Individual Plaintiffs suffering a loss associated with the same address);²
- The address of the loss location (street addresses only; P.O. Boxes and Parcel Numbers are not acceptable);³ and
- The name of all known insurance carriers providing property insurance coverage to the household members.

Subrogation Plaintiffs shall provide a copy of the Complete List of Individual Plaintiffs to BrownGreer for import and matching to the existing BrownGreer Individual Plaintiff Database.

² To include business entity Direct Plaintiffs, where applicable.

³ Where a property has no street address, Counsel or Law Firm shall provide the best available identifying information for that property.

1 **B. Individual Plaintiffs Retained After Entry of CMO 5—Insurance Information**
2 **Sharing**

3 For cases retained after entry of CMO 5, each Counsel or Law Firm with a case
4 coordinated in JCCP 4955 shall submit an updated complete List of Individual Plaintiffs, whether
5 filed or unfiled, who have retained Counsel or Law Firm in conjunction with claims arising out of
6 a fire that is subject to JCCP 4955 every sixty (60) days to BrownGreer. The List shall include:

- 7 • The first name and last name of all adult members of each household (household
8 defined as a group of Individual Plaintiffs suffering a loss associated with the same
9 address);
- 10 • The address of the loss location (street addresses only; P.O. Boxes and Parcel
11 Numbers are not acceptable); and
- 12 • The name of all known insurance carriers providing property insurance coverage to
13 the household members.

12 **C. Subrogation Claim File Production Master Control Spreadsheet**

13 Subrogation Plaintiffs shall independently conduct a “matching” project between the List
14 of Individual Plaintiffs and the Subrogation List of Claims to identify all property insurance
15 claims related to each of the Individual Plaintiff households. Wherever a match is identified,
16 Subrogation Plaintiffs will endeavor to link the List of Individual Plaintiffs with the Subrogation
17 claim information for each household, and with the unique Individual Plaintiff Control Number
18 and/or the Household Number assigned by BrownGreer.

19 Subrogation Plaintiffs shall create an initial matching spreadsheet called “Claim File
20 Production Master Control” (“CFMC”). The CFMC shall combine and link information from the
21 List of Individual Plaintiffs, the Subrogation List of Claims and the BrownGreer Individual
22 Plaintiff Database as follows:

- 23 • Client information submitted by the Individual Plaintiff firms (client/household
24 member names, loss address, carriers);
- 25 • The corresponding BrownGreer Individual Plaintiff Control Number and/or
26 Household Number; and
- 27 • Insurance claim information matched to the Individual Plaintiff/Household,
28 including Name of Insured, Carrier Name, Claim Number, Date of Loss (as
reported to carrier), Loss Location Address, amount paid, open reserves (if any),
and the status of adjustment of the claim by the carrier.

1 Upon completion, the initial CFMC will be provided to BrownGreer for import into a
2 central data management system. The BrownGreer Portal will then become the central repository
3 for management of all Individual Plaintiff data, including any insurance claim data provided by
4 the Subrogation Plaintiffs. BrownGreer will provide the Subrogation Plaintiffs with access to the
5 BrownGreer Portal to facilitate ongoing matching between Individual Plaintiff and Subrogation
6 data.

- 7 • Subrogation Plaintiffs will update the paid and open reserves as well as claims
8 status for all claims matched to Individual Plaintiffs in the BrownGreer Portal
regularly, and no less frequently than every four (4) months.
- 9 • Upon completion of the initial matching process outlined above, Subrogation
10 Plaintiffs will update the carrier data reported to the BrownGreer Portal to provide
11 a breakdown of payments by coverage, to include payments under Building,
12 Contents/Business Personal Property, Alternative Living Expenses/Business
Interruption and Auto/Specialty. Once a coverage breakdown has been added to
the BrownGreer Portal, all updates going forward will include a breakdown by
coverage.

13 **D. Individual Plaintiff Insurance Claim File Production**

14 The Subrogation Plaintiffs will produce claim files to BrownGreer as follows:

- 15 • For any claim that has been matched to an Individual Plaintiff Household, the
16 Subrogating Plaintiff will produce the closed claim file to BrownGreer once the
claim has been closed for adjustment; and
- 17 • BrownGreer will upload the claim file to the BrownGreer Portal and alert counsel,
18 or the individual plaintiff (if pro se), by way of email notification, that counsel or
19 pro se plaintiff has twenty-one (21) days to review the insurance claim file and
20 object to its production and/or redact information from the production. As soon as
21 representing counsel or the *pro se* plaintiff marks the claim file as “review
22 complete”, the claim file will be made available to the Defendants through the
BrownGreer Portal. Plaintiff shall upload into the BrownGreer Portal the approved
version of the claim file for production to the Defendants. However, if no review is
performed or objection made within twenty-one (21) days of email notification,
then the insurance claim file will automatically be made available to the Defendants
through the BrownGreer Portal as provided by Subrogating Plaintiff.

23 **E. Access to the BrownGreer Portal**

24 Each Individual Plaintiff, Subrogation Plaintiff, and Defendant shall establish a secure
25 connection with the BrownGreer Portal by obtaining authorized user names and secure login
26 passwords to permit use of BrownGreer Portal by counsel.

27 Each Plaintiff shall continue to use the BrownGreer Portal to request, obtain, complete, or
28 upload any required data, and serve the appropriate CMO 1 and 2 compliance information online

1 (including uploading PDFs or other electronic images, photographs and videos of any records
2 required). Liaison Counsel for Individual Plaintiffs shall continue to work with BrownGreer to
3 ensure CMO compliance and will continue to view, search and download non-confidential
4 materials submitted to the BrownGreer Portal. Finally, the Court may establish a secure
5 connection with the BrownGreer Portal by obtaining an authorized user name and secure login
6 password to permit use of the BrownGreer Portal by the Court.

7 Except as set forth herein, Counsel for plaintiffs and each *pro se* plaintiff shall be
8 permitted to view, search and download on the BrownGreer Portal those materials submitted by
9 that Plaintiff and by Defendants relating to that Plaintiff. Plaintiffs' Co-Liaison Counsels shall
10 maintain administrative access co-equal with BrownGreer to manage data and to facilitate
11 communications consistent with the purposes of this order.

12 **IV. PRODUCTION OF INDIVIDUAL PLAINTIFF CASE-SPECIFIC DAMAGES**
13 **INFORMATION AND SUPPLEMENTAL PROCEDURES RELATING TO**
14 **BELLWETHER AND PREFERENCE CASES**

15 **A. CMO 1: NOA – Plaintiff-Specific Information.**

16 Each filed SFC and NOA includes 21 enumerated categories of damages suffered by a
17 particular plaintiff or Individual Plaintiff Household. That list of damage categories must be
18 completed by each Individual Plaintiff Household.

19 The original purposes for the use of the NOA/SFC and the stay on damages discovery were
20 to balance the need for information and the difficult burdens on fire victims.⁴ Both Individual
21 Plaintiffs and PG&E conveyed this sentiment to the court at the first case management conference
22 on February 27, 2018. (See Hearing Transcript pp. 31:8-33:20.)

23 In order to address these concerns, and in keeping with the spirit of the CMO 1 stay of
24 damages discovery, Individual Plaintiffs' Lead and Liaison Counsel and PG&E propose that each
25 individual plaintiff shall be required to confirm the actual damage categories that apply to that
26 plaintiff's specific case. This confirmation is herein referred to as the "CMO Compliance

27 ⁴ PG&E reserves the right to move to lift the stay on damages discovery, either generally or as to a
28 specific firm, following meet and confer. Plaintiffs' leadership reserves the right to oppose any
lifting of the stay on damage discovery.

Information” and shall be submitted by each Individual Plaintiff to the BrownGreer Portal. The parties have agreed to use the BrownGreer Portal to hold such information.

Each individual plaintiff whose case has been coordinated in JCCP 4955 before the entry of CMO 5 shall submit the CMO Compliance Information to the BrownGreer Portal within 30 days of the entry of CMO 5. Each individual plaintiff whose case is coordinated in JCCP 4955 after entry of CMO 5 shall have 30 days from the entry of the order granting coordination of that plaintiff’s case in which to submit the CMO Compliance Information to the BrownGreer Portal.

Service of completed CMO Compliance Information shall be deemed to occur when the submitting party has performed each of the steps required by the BrownGreer Portal to execute the online submission of the materials, and the submitting party has received confirmation on screen that the materials have been successfully submitted.

B. Trial Selection: CMO 4

1. Atlas Fire

Following the October 25, 2018 case management conference and the entry of CMO 4, the parties have met and conferred regarding the case selection procedures for the first Bellwether trial. The parties agree that the Court set for trial a group of claims representing the majority of the types of claims that will be presented by average or typical plaintiffs in the litigation as a whole. The parties have agreed to ten separate categories of claimants, each of which holds one or more of the following types of claims:

1. Wrongful death
2. Personal injury
3. Total loss of home on property larger than 5 acres
4. Total loss of home on property smaller than 5 acres
5. Partial loss/non-total damage to home
6. Commercial loss to non-winery
7. Commercial loss to winery/vineyard
8. Loss/displacement of renter/tenant with destruction of personal property
9. Damage/destruction to raw land without loss of home
10. Smoke and soot

In order to select the 15 plaintiffs for trial under CMO 4, the plaintiffs will present 20 cases to PG&E for review with the completed CMO Compliance Information from the BrownGreer Portal for each of these plaintiffs.

1 Lead Counsel for Public Entities continues to meet and confer with Leadership and
2 Defense counsel regarding public entity bellwether participation in the September 23, 2019 Atlas
3 trial. Counsel plans to fully brief the issue in preparation for the January 25, 2019 Case
4 Management Conference but has raised during meet and confer conversation the prospect of
5 including Napa County in the subject Atlas trial as a means to understanding public entity
6 valuation.
7

8 **2. Sulphur Fire**

9 CMO 4 provides for a Bellwether process relating to the Atlas Trial. The parties have
10 already presented to this Court briefing and oral argument relating to the Bellwether Trial
11 Selection procedures. The Singleton Plaintiffs have requested an all-issues trial of 5-10 cases for
12 late June, 2019, for the Sulphur Fire. PG&E opposes the request. PG&E notes that the Court has
13 already set two prior Case Management Conferences to address the scheduling of the non-
14 preference trial. The Singleton Plaintiffs already requested this and the Court rejected this
15 approach. It is inappropriate to re-litigate the issues that have been previously litigated here.

16 **C. Preference Cases and Preference Protocol**

17 PG&E and leadership for Individual Plaintiffs recognize that there may be a number of
18 individuals who believe they may qualify for preference trials and that such trials may relate to
19 any number of the various fires that are subject to this coordinated proceeding. In an effort to
20 manage the process around the filing of preference claims, PG&E and leadership for Individual
21 Plaintiffs and Subrogation Plaintiffs have negotiated a protocol for the evaluation of preference
22 claims, which is attached hereto as Exhibit C. This protocol has been modeled much like the one
23 that was entered in certain cases concerning fires outside of PG&E's service territory (*i.e.*, the
24 Southern California fire cases) and is consistent with the case realities that have presented
25 themselves in other catastrophic mass tort litigation before this Court. To the extent any attorney
26 representing an Individual Plaintiff in this case believes it is appropriate to file a motion for
27 preference trial settings under California Code of Civil Procedure Section 36, such attorney must
28 utilize the mechanisms identified in the Order regarding Preference Protocol entered

1 simultaneously with this Order. To the extent that a proposed plaintiff preference request has a
2 corresponding Subrogation claim, Subrogation Leadership will be included and consulted as well.
3 The Preference Protocol agreed to by leadership for the parties is presented as proposed CMO 6.

4 **V. RESPONSE TO CASE MANAGEMENT CONFERENCE STATEMENT FOR**
5 **CERTAIN INDIVIDUAL PLAINTIFFS**

6 On the afternoon of Friday, December 21, the Singleton firm presented PG&E and counsel
7 for the various plaintiff groups an 11-page PDF statement with instructions to attach that
8 document to the Joint CMC Statement.⁵ Given that the Joint Statement would be filed on
9 Christmas Eve, the submission left the parties essentially no time to actually meet and confer. The
10 PDF statement followed a week of requests for the Singleton firm's substantive positions and a
11 December 20 letter from PG&E documenting the firm's failure to meet and confer. Finally, the
12 PEC sent a written statement to the Singleton firm and all counsel on December 21:

13 "We take seriously the meet and confer requirements of the court. We would have liked to
14 have the opportunity to review your positions and to present the issues to the PEC, PSC
15 and to all counsel.

16 Over 50 law firms in this litigation are proceeding in cooperation towards common
17 litigation goals. No firm's clients or lawyers' interests are more important than any others
18 in this case.

18 We have asked for your submission for a week. It is now the Friday before Christmas Eve
19 and we have received nothing other than statements asking to relitigate issues or seeking a
20 separate special arrangement for your firm." (Email from K. Baghdadi to Gary LoCurto
and Frank Pitre, et al. dated 12/21/2018)

21 This Court asked for a single submission with all parties' positions included. (Oct. 25,
22 2018 Status Conference Transcript, 18:15 – 19:4) In light of this procedural history, the
23 Singleton submission violates the Court's instructions at the last hearing.

24 **A. PG&E's Response**

25 While one Plaintiff in the Singleton Group has filed a motion seeking statutory preference,
26 the bulk of the requests now made by the Singleton Group are much broader and were explicitly
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28 ⁵ The Singleton Firm submission is attached hereto as Exhibit C.

1 designed to allow this one group of Plaintiffs—who have claims related to many different fires and
2 share nothing in common other than the fact that they are represented by the same lawyer—to
3 disengage completely from the rest of the thousands of parties to these coordinated proceedings. If
4 the Singleton Group were to succeed in their efforts, they would in effect create two different
5 JCCPs—one for all of the Plaintiffs represented by Gerald Singleton and one for everyone else.⁶

6 The Singleton Group’s submission is a direct attack on the concept of coordination and this
7 Court’s Coordination Order and should be rejected. Allowing the Singleton Group to separate from
8 the overall coordinated proceedings would not only be grossly inefficient, it would also prejudice
9 the rights of PG&E and the thousands of other claimants who are part of the coordinated proceeding.
10 As the Court is aware, there are dozens of different law firms representing the thousands of
11 Individual Plaintiffs who have suffered losses in connection with the North Bay Fires. With the
12 exception of the Singleton Group, these lawyers are working together efficiently and effectively
13 through Plaintiffs’ Leadership, which is in turn working with PG&E to move the entire coordinated
14 proceeding on a path toward resolution. The Singleton Group has made no showing as to why it
15 needs to be treated differently and be permitted to pursue its own path divorced from all of the
16 procedures in place to protect the due process rights of all involved.

17 In fact, this effort to disrupt the entire coordinated proceeding appears to be nothing more
18 than an attempt by one lawyer to elevate the interests of a small subset of the overall parties above
19 all others and jump to the front of the line. The Singleton Group has not been coy about this desire.
20 Instead, the Singleton Group has adamantly refused to even be part of the mediation process that
21 PG&E and Individual Plaintiffs’ Leadership has established as a result of discussions with the Court
22 at prior Case Management Conferences (“CMC”). The Singleton Group has insisted on pursuing

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24
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26 ⁶ Although it may be the case that certain trials do need to move forward given a particular
27 Plaintiff’s statutory rights, that is a completely different issue than permitting a subset of
28 Individual Plaintiffs to separate themselves entirely from the coordinated proceedings regardless
of whether they are entitled to any preference.

1 this path of inefficiency while offering to drop it entirely—including all preference motions—if
2 PG&E will agree to mediate these Plaintiffs’ claims separate from everyone else’s claims.

3 As the Court is aware, the primary charge to the Coordination Judge is to “manag[e] all steps
4 of the pretrial, discovery and trial proceedings to expedite the just determination of the coordinated
5 actions without delay”. (Rule of Court 3.541(b).) To achieve this goal, the Coordination Judge is
6 “vest[ed]” with “whatever great breadth of discretion may be necessary and appropriate to ease the
7 transition through the judicial system of the logjam of cases which gives rise to coordination”.
8 (*McGhan Med. Corp. v. Superior Court*, 11 Cal. App. 4th 804, 812 (1992); *id.* at 813 (“One of the
9 purposes, in our view, of a centralized coordinating authority is to vest in one administrator the
10 power to organize the litigation in an efficient and equitable manner, for the benefit of all.”).)

11 One way in which the Coordination Judge is authorized to manage the coordinated actions
12 efficiently is by appointing liaison counsel to act on behalf of each side included in the coordinated
13 proceeding. (Rule of Court 3.506(a).) This Court has chosen to appoint Lead Counsel for each
14 group represented in this coordinated proceeding, and has clearly established the roles and
15 responsibilities of such groups. (*See* CMO No. 1 at 1-10.) The Singleton Group should not be
16 entitled to derail this entire process—which is working effectively for the other thousands of
17 claimants and PG&E—by making separate discovery and trial requests that will apply only to a
18 limited group of claimants. To create separate litigation tracks for certain groups of Plaintiffs will
19 simply delay the entire process and will jeopardize the parties’ ability to reach the earliest resolution
20 of the totality of Plaintiffs’ claims.

21 Given the overall scope of these proceedings, it simply is not enough for the Singleton Group
22 to complain that there has been some delay by requiring them to work through Plaintiffs’ Leadership
23 (a claim that is nothing more than an unsupported assertion). Where certain counsel participating
24 in a coordinated proceeding have likewise complained that coordination may cause delay to the
25 detriment of those particular counsel, the Court of Appeal has stated that although “[i]t is possible
26 that some delay in certain cases may be experienced[,] [w]e view this potential detriment to the few
27 to be a modest price to pay for the efficiency to be gained by the majority of cases through
28 coordination.” *McGhan*, 11 Cal. App. 4th at 813.

1 **1. Request To Set A Date For The Sulphur Trial.**

2 The Singleton Group has renewed their request for a Sulphur fire bellwether trial in 2019.
3 This Court should once again reject that request. Prior to the October 25 CMC, the Singleton Group
4 submitted a proposal asking for a Sulphur fire bellwether trial to be set for March or April of 2019.
5 At the CMC, both Plaintiffs' Leadership and PG&E opposed the Singleton Group's proposal,
6 arguing that the Sulphur fire would not be appropriate for the first bellwether trial given its limited
7 impact compared to the Tubbs and Atlas fires. (10/25/18 CMC Tr. 23:25-24:7 (Individual Plaintiffs'
8 Leadership stating that "[f]or a host of reasons, it was determined by the larger group, including
9 subrogation and the public entities, that it was not going to be helpful in moving the litigation
10 forward toward resolution"; *id.* 40:24-41:13 (PG&E arguing that given the Sulphur fire's limited
11 damages, it has "no chance of moving the needle" with respect to settlement).) Although PG&E
12 understands that the Sulphur fire and the damage it caused is tragic for those who were impacted,
13 as the Singleton Group acknowledges, the Sulphur fire destroyed only approximately 160 structures,
14 whereas the Tubbs fire and Atlas fire destroyed over 5,600 and 780, respectively. Moreover, unlike
15 the Tubbs fire and the Atlas fire, the Sulphur fire did not involve any fatalities. For these very
16 reasons, this Court agreed that the Sulphur fire was not appropriate to try first. (*See* CMO No. 4 at
17 2:1-6 (rejecting Sulphur fire as candidate for a bellwether trial and noting the Sulphur fire "does not
18 contain all the issues presentable in the other fires, such as a death case, and involves a relatively
19 few number of structures".) Nothing relevant has changed since October.

20 PG&E also continues to disagree with the Singleton Group's characterization of the Sulphur
21 fire as a "straightforward" case as well as their conclusory statement that merely because the case
22 allegedly involves pole failure it will require less written discovery, depositions or experts than the
23 other cases. Even if it is true that the Sulphur fire allegedly does not implicate PG&E's vegetation
24 management program, that serves as another reason to deny the Singleton Group's request according
25 to this Court's reasoning. In selecting the Atlas fire over the Tubbs fire, this Court reasoned that the
26 Atlas fire should be tried first in part because the Atlas fire allegedly involves vegetation to
27 powerline contact, "which may be common to the other fires". (*Id.* at 2:22-25.)

1 Further, PG&E does not believe that a Sulphur fire trial will be as short as the Singleton
2 Group claims. The Singleton Group's estimated number of witnesses fails to include:

- 3 • any percipient witnesses, either from PG&E or potential third party eyewitnesses;
- 4 • any first responders;
- 5 • a complete list of "corporate" witnesses to discuss PG&E's policies and practices
6 related to wildfire risk mitigation, pole integrity and electric operations;
- 7 • any damages experts, which will be needed for each of the (at least) six categories of
8 damages the Singleton Group proposes including in the trial; or
- 9 • any experts at all to testify for PG&E.

10 By PG&E's estimation, at the very least, a Sulphur trial will take four to six weeks to complete.

11 Finally, slotting a Sulphur fire trial into the queue prior to the Atlas fire trial that this Court
12 previously scheduled for September 23, 2019 would be prejudicial to PG&E. Plaintiffs' Leadership,
13 which is responsible for the coordinated action on behalf of thousands of Individual Plaintiffs, as
14 well as over 200 Subrogation Plaintiffs and several Public Entity Plaintiffs, advocated for an Atlas
15 fire trial in September. Plaintiffs have served extensive discovery on PG&E (including over 2000
16 Requests for Production and approximately 650 interrogatories) and have represented to the Court
17 that they will complete any necessary discovery and prepare for a trial by September 2019. Given
18 the parties' focus on preparing for an Atlas fire trial, PG&E should not now be asked to also focus
19 its efforts on preparing for an earlier trial date related to yet another fire, particularly where the
20 Singleton Group is not alleging they are entitled to statutory preference. In addition to the Atlas
21 fire, PG&E may need to prepare for a Lobo fire statutory preference trial, as well as continue to
22 respond to Plaintiffs' discovery requests and deposition notices related to the generalized corporate
23 discovery that will be required for the Atlas fire trial. Plaintiffs' Leadership and PG&E have been
24 expending significant efforts on preparing for the Atlas fire trial. To date, there has been only one
25 deposition related to the Sulphur fire, and PG&E anticipates that many more will be required before
26 this case can proceed to trial. For PG&E to split its focus now, only ten months before the Atlas
27 fire trial is scheduled to commence, will cause significant prejudice and may require a delay in the
28 Atlas fire trial date.

1 **2. Request To Conduct Preference Discovery.**

2 The Singleton Group proposes that they be permitted to conduct discovery related to any
3 Lobo fire preference trial that may be granted outside of the structure ordered by the Court in CMO
4 No. 1. PG&E opposes this request. Ms. Fowler, who is represented by the Singleton Law Firm,
5 has chosen to file a preference motion and to have her trial held in an expedited fashion. There are
6 presumably many other Plaintiffs who potentially qualify for statutory preference who have, instead,
7 reasonably chosen to wait until the parties complete the discovery process before requesting a trial
8 date. PG&E cannot shift all of the general corporate discovery to an expedited track.

9 To the extent there are Lobo-specific issues on which Ms. Fowler needs additional discovery
10 for purposes of the preference trial, those narrow requests can be made through the existing
11 Plaintiffs' Leadership process. It is not clear that any additional discovery related to the Lobo fire
12 will even be necessary for Ms. Fowler to proceed, given that Plaintiffs have served over 100
13 Requests for Production, almost 40 Interrogatories and approximately 30 Requests for Admission
14 related specifically to the Lobo fire. If Ms. Fowler believes that Plaintiffs' Leadership has refused
15 to permit Ms. Fowler to take discovery on critical, Lobo-specific issues, Ms. Fowler may seek relief
16 from the Court. But the fact that Ms. Fowler has filed a claim for statutory preference should not
17 derail the discovery process, which has been running through Plaintiffs' Leadership at the Court's
18 express direction.

19 **3. Request For Separate Track.**

20 This request is a frontal assault on the very structure of the coordinated proceeding. PG&E
21 opposes the Singleton Group's request to essentially dismantle the coordinated proceeding and
22 create a separate litigation track for this particular group of Individual Plaintiffs. As stated in Section
23 V.A, *supra*, to create separate tracks for certain individual claimants would not only be grossly
24 inefficient, but will also prejudice the rights of PG&E and the thousands of other claimants who are
25 part of the coordinated proceeding.

26 In concluding that this was a complex case, this Court, acting as the Coordination Motion
27 Judge, found that these proceedings "require[] exceptional judicial management to avoid placing
28 unnecessary burdens on the court or the litigants and to expedite the case". (Cal. Code of Civ. Proc.

1 § 3.400(a).) This Court therefore correctly determined that coordination was appropriate for the
2 thousands of individual claimants, hundreds of subrogation insurers and multiple public entities who
3 are participating in this proceeding. In making that determination, this Court noted that because of
4 “the substantial overlap as among the PG&E witnesses and documents, as well as the experts” as
5 well as “common discovery and motion practice across all of the fires relating to PG&E’s policies
6 and practices” and “common legal questions relating to inverse condemnation and other matters”,
7 there were “benefits that c[ould] only be achieved through a single coordinated proceeding”. (1/4/18
8 Order Granting Petitions for Coordination and Staying Cases 4-5.) Indeed, this Court stated that to
9 split these cases into separate proceedings would “cause unnecessary procedural delays”. (*Id.* at 6.)
10 This is even more true today, one year into the coordinated proceeding, where the parties have been
11 working through the Leadership groups to bring motions, complete discovery and move all of the
12 cases, in the entire coordinated proceeding, on a path to resolution.

13 Because the Singleton Group wants to jump to the front of the line, they are asking this Court
14 to take action that would jeopardize the goals set forth in the governing law as well as the progress
15 that the parties have made in the last year to resolve this proceeding. This simply should not be
16 permitted for the reasons set forth in Section V.A, *supra*. (*See, e.g., McGhan*, 11 Cal. App. 4th at
17 813 (“One of the purposes, in our view, of a centralized coordinating authority is to vest in one
18 administrator the power to organize the litigation in an efficient and equitable manner, for the benefit
19 of all.”); *id.* (“It is possible that some delay in certain cases may be experienced. We view this
20 potential detriment to the few to be a modest price to pay for the efficiency to be gained by the
21 majority of cases through coordination.”).)

22 4. Request to File Motion to Compel Regarding Cal Fire Reports and to 23 Inspect Physical Evidence.

24 The Singleton Group is seeking leave to file a motion to compel the Cal Fire reports and
25 access to the physical evidence in Cal Fire’s possession. As an initial matter, PG&E strongly
26 disagrees with the Singleton Group that the Cal Fire reports are “an import[ant] tool to further the
27 discovery process”. Indeed, such reports should be inadmissible. Plaintiffs’ Leadership also agrees
28 that the Cal Fire reports are not important. (9/21/18 CMC Tr. 30:1-2 (Mr. Kelly, on behalf of

1 Individual Plaintiffs, stating “[i]t’s not the reports; it’s the evidence” that is important); *id.* at 45:24-
2 25 (Mr. Baghdadi, on behalf of Individual Plaintiffs, again stating “I don’t think there’s
3 disagreement [with PG&E]. It’s the evidence. It’s not the reports.”).) With respect to the physical
4 evidence in Cal Fire’s possession, although PG&E agrees that getting to inspect such evidence is
5 important, there is already a process underway to get the parties access to such evidence, and
6 therefore the Singleton Group’s proposed motion to compel is unnecessary, inefficient and a waste
7 of this Court’s resources.

8 As Plaintiffs’ Leadership stated at the October 25 CMC, with respect to the fires that were
9 not referred to a district attorney’s office, the parties have an agreement with the Attorney General
10 to get the Cal Fire reports and access to the evidence. The parties received those reports on
11 November 13, 2018. The parties also sent a proposed evidence transportation and storage protocol
12 to the Attorney General to review and expect to move forward with that process shortly.

13 With respect to the fires that were referred to a district attorney’s office, the parties have
14 been working with the Attorney General and the relevant District Attorneys to get access to the
15 reports and physical evidence related to those fires. Several of the District Attorneys have already
16 agreed to permit the parties access to the physical evidence, and Plaintiffs’ Leadership is finalizing
17 the inspection details with the Attorney General. To file a motion to compel now would be a waste
18 of the Court’s and the parties’ resources. The relevant governing authority has been working
19 productively with PG&E and Plaintiffs’ Leadership and this motion is not necessary.

20 21 **B. Individual Plaintiffs’ Response**

22 The timing and tenor of the Singleton submission is a studied exercise in disruption.
23 Moreover, this refusal to work collaboratively has become manifest in the Southern California fire
24 cases before Judge Buckley and in the Butte Fire in Amador and Calaveras Counties cases.⁷ It is
25

26 ⁷ The Singleton firm has been removed from the PSC in Butte, voted off of the PSC in the
27 Northern California fire cases, and the Court denied the firm a leadership position in Southern
28 California Fire cases. In all cases, the firm sought a “separate track” for his firm, and refused to
comply with Case Management Orders.

contrary to the long history of successful collaboration in JCCP cases.

1. Liability Discovery

The California JCCPs are known nationally for the cooperation and coordination among the plaintiffs, the ability of nationally recognized counsel to review millions of pages of documents, conduct hundreds of liability depositions, prepare exceptional experts across multiple scientific disciplines, and the ability to try cases to obtain positive results. Over the last 25 years, lawyers from all over the country, from both sides, have come to California to work with California leadership within the JCCP system to address and resolve cases on the merits. With respect to the plaintiffs' interests, the mark of the JCCP courts and plaintiffs' leadership has been inclusion. The test for inclusion in these efforts is simple: performance of substantive work for the benefit of all plaintiffs. The ability to market for cases, make litigation threats or cause other disruptions has no place within real litigation efforts; especially within a JCCP, which usually involves hundreds or thousands of plaintiffs. This case is no different.

This is one of the most significant JCCP's in California history. The fires that have devastated Northern California have killed and injured over one-hundred people and claimed the homes, personal property and businesses of tens of thousands. The PEC and PSC in this litigation has undertaken the document review to address corporate responsibility as it relates to each fire and across all fires. This liability discovery is critical. Along with subrogation, the PEC and PSC have taken all of the liability depositions thus far and have conducted the ESI work for the benefit of all plaintiffs. The PEC and PSC and counsel for the public entities have worked cooperatively with the governmental entities to obtain the documents and evidence while allowing the government to fulfill its function as well.

1 **2. There is No Need for a Separate Track for Any Firm**

2 The coordination process cannot work if a single firm is permitted to ignore the procedures
3 designed to make sure all plaintiffs have access to the time and resources of the Court. Several
4 dozen firms have worked together in an organized fashion, recognizing that doing so may not
5 yield the fastest result for any one of them. This approach has by all accounts gone extremely well
6 *with all counsel*. The plaintiffs have been able to achieve over 99% compliance with CMO 1 with
7 *all firms* and now *all firms* are in essential compliance with CMO 2. The systems in place for
8 exchanging information is working. There is nothing about a single law firm that warrants a need
9 to carve out a separate Case Management process.
10

11 **3. Preferential Trial Setting and Other Trial Settings.**

12 As expected, there are several dozen individuals whose cases may be eligible for
13 preferential trial setting. Lawyers in over 30 cases have provided to leadership case specific
14 information supporting a preferential trial setting. The PEC expects dozens more. The setting of
15 preference cases is a critical component that allows cases be resolved on the merits. Plaintiffs
16 leadership strongly believes that all plaintiffs should be on equal footing and have the right to
17 participate in presentation of their specific preference cases. To that end, all firms in this case
18 were invited to complete a preference questionnaire. The Singleton firm has refused to cooperate
19 with that effort.
20

21 Almost all of the firms in this litigation are working for the benefit of all of the plaintiffs
22 given the devastation that has occurred. This catastrophic situation should not result in a race to
23 the filing of motions.⁸ This is especially true if the preference trial demand is made contingent on
24

25
26
27 ⁸ The Singleton firm has now put in writing that they are bringing 17 preference cases to be
28 tried in mid-2019 (eight in Northern California and nine in Southern California.) They also seek a
Sulphur setting, which the court addressed at the last status conference.

1 an agreement by the defendant to create a separate mediation track for one firm's clients. As
2 PG&E states in its submission: "The Singleton Group has insisted on pursuing this path of
3 inefficiency while offering to drop it entirely—including all preference motions—if PG&E will
4 agree to mediate these Plaintiffs' claims separate from everyone else's claims."⁹ It is a dangerous
5 precedent to let the disconnected and seemingly frantic mediation energies of one lawyer spill over
6 into the litigation of the actual cases. The litigation plan must be connected to the actual litigation
7 realities. For example, there is significant corporate liability discovery that remains to be
8 completed including basic ESI, document review, corporate risk management, as well as origin
9 and cause depositions. The lawyers conducting that work are best positioned to work out trial
10 strategy based upon a goal trial success for the benefit of plaintiffs.

12 **4. Cal-Fire**

13 Plaintiffs' leadership has worked since the end of September with CAL Fire, by way of the
14 Attorney General's Office, to obtain access to all evidence, reports, and investigative materials
15 related to the North Bay Fires. The Attorney General's Office has assigned two lawyers to
16 interface with plaintiffs' leadership on the North Bay Fires, and they have been extremely
17 responsive and are working diligently to get leadership access to the reports and physical evidence
18 quickly as possible.

20 The Camp Fire and the Woolsey Fire placed significant burdens on CAL Fire and
21 demanded that resources that otherwise would have been available to coordinate with plaintiffs'

25 ⁹ Every firm has the right to request mediation or to attempt to resolve their cases individually. A
26 capable firm can contribute substantively to the ESI work, the document production and review, the
27 corporate liability depositions, the experts, the trial preparation and trial work with the rest of the firms if
28 settlement efforts do not succeed. However, the disruption of positive litigation progress as a technique to
demand a separate mediation track is not productive.

1 litigation efforts, were diverted to imminent, lifesaving duties for several weeks. Despite this
2 necessary and understandable delay, the plaintiffs have made significant progress.

3 Additionally, the Attorney General and CAL Fire are not the only decision makers
4 involved. The District Attorneys of each county where a North Bay Fire occurred has a claim to
5 official information privilege related to the fire in their county that has been referred for criminal
6 prosecution. This includes six different counties and district attorney's offices: Nevada County,
7 Mendocino County, Lake County, Humboldt County, Napa County, and Sonoma County.
8 Plaintiffs' leadership had to seek agreement from these District Attorneys as well as the Attorney
9 General and CAL Fire to get access to evidence and reports. Leadership has done so, and is only
10 awaiting agreement from two Counties, Nevada and Mendocino. All other counties have agreed to
11 allow access.
12

13 In sum, the following agreements have been reached to date: Plaintiffs have access to all
14 CAL Fire reports and investigative materials for all North Bay Fires except McCourtney, Lobo
15 and Redwood Fires. All reports for unrefereed fires have already been produced. Reports for
16 Sulphur, Atlas, Honey, Cherokee, Blue, Norrbom, Adobe, Partrick, Pythian, Nuns, 37, and Pocket
17 are currently being reviewed and prepared for production. The Cascade Fire report alone had 25
18 exhibits, including one exhibit with over 300 audio recordings. Each must be reviewed prior to
19 production. CAL Fire has also agreed to produce reports for the McCourtney, Lobo and Redwood
20 Fires if the District Attorney's Office agrees. Plaintiffs' leadership has sent correspondence to
21 those District Attorneys but have not received a response yet. Of note, the Tubbs Fire is the one
22 North Bay Fire that is not contemplated by any of the agreements above since there is no CAL
23 Fire report at this time.
24
25

26 **5. Remedy**

27 Issues within the plaintiff group should be addressed within the plaintiff group. All
28 counsel should have the right to participate. The meet and confer should NOT take place in the

1 status conference statement. The parties have made real progress in moving this case forward
2 since the October 25th status conference. The fact that over half of the submission is responsive to
3 this untimely and misguided filing is telling.

4
5 Dated: December 24, 2018

WALKUP, MELODIA, KELLY & SCHOENBERGER

7 By: /s/ Michael A. Kelly

8 MICHAEL A. KELLY

Attorneys for Individual Plaintiffs

10 Dated: December 24, 2018

BERGER KAHN

13 By: /s/ Craig Simon

14 CRAIG SIMON

Attorneys for Subrogation Plaintiffs

16 Dated: December 24, 2018

SKIKOS, CRAWFORD, SKIKOS & JOSEPH LLP

19 By: /s/ Steven J. Skikos

20 STEVEN J. SKIKOS

Attorneys for Plaintiffs

22 Dated: December 24, 2018

CRAVATH, SWAINE & MOORE LLP

24 By: /s/ Kevin J. Orsini

25 KEVIN J. ORSINI

Attorneys for Defendants Pacific Gas & Electric
Company and PG&E Corporation

EXHIBIT A

MICHAEL A. KELLY (SB #71460)
mkelly@walkuplawoffice.com
KHALDOUN A. BAGHDADI (SB #190111)
kbaghdadi@walkuplawoffice.com
**WALKUP, MELODIA, KELLY &
SCHOENBERGER**
650 California Street, 26th Floor
San Francisco, CA 94108
Telephone: (415) 981-7210

FRANK M. PITRE (SBN 100077)
fpitre@cpmlegal.com
ALISON E. CORDOVA (SBN 284942)
acordova@cpmlegal.com
COTCHETT, PITRE & McCARTHY
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000

STEVEN SKIKOS (SB #148110)
sskikos@skikos.com
SKIKOS, CRAWFORD, ET AL.
1 Sansome Street, Ste 2830
San Francisco, CA 94104
Telephone: (415) 546-7300

ON BEHALF OF DIRECT PLAINTIFFS

EVAN R. CHESLER (*pro hac vice*)
echesler@cravath.com
TIMOTHY G. CAMERON (*pro hac vice*)
tcameron@cravath.com
KEVIN J. ORSINI (*pro hac vice*)
korsini@cravath.com
CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, NY 10019
Telephone: (212) 474-1000

ON BEHALF OF DEFENDANTS

CRAIG S. SIMON (SB #78158)
csimon@bergerkahn.com
BERGER KAHN, A Law Corporation
1 Park Plaza, Suite 340
Irvine, CA 92614
Telephone: (949) 474-1880

ON BEHALF OF SUBROGATION PLAINTIFFS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

Coordination Proceeding
Special Title (Rule 3.550)

CALIFORNIA NORTH BAY FIRE CASES

JCCP No. 4955

**STIPULATION AND [PROPOSED] CASE
MANAGEMENT ORDER 5 RE:
COLLECTION AND PRODUCTION OF
CASE MANAGEMENT ORDER
COMPLIANCE INFORMATION AND
SUBROGATION FILES**

**Assigned for All Purposes to:
Hon. Curtis E.A. Karnow, Dept. 304**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The parties, by and through Individual Plaintiffs' Lead and Liaison Counsel, Lead Counsel for Subrogation, and Counsel for Defendant PG&E, hereby reach the following stipulation as to the further handling of case specific issues which includes the production of subrogation claim

files (CMO 1) and several case management order compliance issues including filing procedures (CMO 1), identification and confirmation of damage claims (CMO 1), liability discovery from individual plaintiffs or witnesses identified by individual plaintiffs (CMO 2).

STIPULATION

PG&E, Lead and Liaison Counsel for Individual and Subrogation Plaintiffs agree to the following Order in relation to the collection and production of case management order compliance information and subrogation claim files.

So stipulated:

Dated: December 24 , 2018

WALKUP, MELODIA, KELLY & SCHOENBERGER

By: */s/ Michael A. Kelly*

MICHAEL A. KELLY

Attorneys for Individual Plaintiffs

Dated: December 24, 2018

CRAVATH, SWAINE & MOORE LLP

By: */s/ Kevin J. Orsini*

KEVIN J. ORSINI

Attorneys for Defendants Pacific Gas & Electric
Company and PG&E Corporation

Dated: December 24, 2018

COTCHETT PITRI & MCCARTHY LLP

By: */s/ Frank M. Pitri*

FRANK M. PITRI

Attorneys for Individual Plaintiffs

1 Dated: December 24, 2018

BERGER KAHN, A LAW CORPORATION

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By: /s/ Craig S. Simon
CRAIG S. SIMON
Attorneys for Subrogation Plaintiffs PURE
Insurance Company, California FAIR Plan
Association, et al.

IT IS SO ORDERED.

Dated:

Hon. Curtis E.A. Karnow
Judge of the Superior Court

MICHAEL A. KELLY (SB #71460)
mkelly@walkuplawoffice.com
KHALDOUN A. BAGHDADI (SB #190111)
kbaghdadi@walkuplawoffice.com
**WALKUP, MELODIA, KELLY &
SCHOENBERGER**
650 California Street, 26th Floor
San Francisco, CA 94108
Telephone: (415) 981-7210

FRANK M. PITRE (SBN 100077)
fpitre@cpmlegal.com
ALISON E. CORDOVA (SBN 284942)
acordova@cpmlegal.com
COTCHETT, PITRE & McCARTHY
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000

STEVEN SKIKOS (SB #148110)
sskikos@skikos.com
SKIKOS, CRAWFORD, ET AL.
1 Sansome Street, Ste 2830
San Francisco, CA 94104
Telephone: (415) 546-7300

ON BEHALF OF DIRECT PLAINTIFFS

EVAN R. CHESLER (*pro hac vice*)
echesler@cravath.com
TIMOTHY G. CAMERON (*pro hac vice*)
tcameron@cravath.com
KEVIN J. ORSINI (*pro hac vice*)
korsini@cravath.com
CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, NY 10019
Telephone: (212) 474-1000

ON BEHALF OF DEFENDANTS

CRAIG S. SIMON (SB #78158)
csimon@bergerkahn.com
BERGER KAHN, A Law Corporation
1 Park Plaza, Suite 340
Irvine, CA 92614
Telephone: (949) 474-1880

ON BEHALF OF SUBROGATION PLAINTIFFS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

Coordination Proceeding
Special Title (Rule 3.550)

CALIFORNIA NORTH BAY FIRE CASES

JCCP No. 4955

**[PROPOSED] CASE MANAGEMENT
ORDER 5: COLLECTION AND
PRODUCTION OF CASE
MANAGEMENT ORDER COMPLIANCE
INFORMATION AND SUBROGATION
FILES**

**Assigned for All Purposes to:
Hon. Curtis E.A. Karnow, Dept. 304**

This Case Management Order establishes the obligations of the Parties and their vendor, BrownGreer, PLC, to collect and organize case-specific information in a central repository in order to facilitate and track compliance with previously established Case Management Orders in this JCCP.

1 **I. PROCEDURE FOR IMPROVING THE TRACKING OF COMPLIANCE WITH**
2 **CASE FILING REQUIREMENTS**

3 **A. Application to All Cases and Counsel**

4 These provisions apply to any Individual Plaintiff whose case has been transferred to JCCP
5 4955 as of the entry of this Order, and to any Individual Plaintiff whose case is transferred to
6 JCCP 4955 after entry of this Order.

7 **B. CMO 1 Requirements: Notice of Adoption/Short Form Complaint**

8 In order to track compliance with Case Management Orders, including CMO 1, the
9 Individual Plaintiffs retained BrownGreer PLC (“BrownGreer”) to manage and control all of the
10 case-specific data relating to JCCP 4995. Under the supervision of Individual Plaintiffs’ Lead and
11 Liaison counsel, BrownGreer has reviewed and uploaded all of the Notices of Adoption and Short
12 Form Complaints into a database, referred to hereinafter as the BrownGreer Portal.

13 In the interests of maintaining an orderly and complete list of Plaintiffs who have adopted
14 the Master Complaint for the benefit of the Court, BrownGreer shall provide a Notice of Adoption
15 Report to the Court on a regular basis, or upon request from the Court. This report will include the
16 name of each plaintiff who has adopted the Master Complaint by virtue of serving an NOA or by
17 filing an SFC, as well as: the name of the primary law firm representing the plaintiff; the fire or
18 fires alleged to have caused injuries to the plaintiff or plaintiff household; the docket case number;
19 and the NOA/SFC case number, hereinafter “Household Number”.¹ The provision of these Notice
20 of Adoption Reports will not obviate, limit, or otherwise affect plaintiffs’ pleading obligations
21 under CMO 1.

22 To assist lead counsel in tracking information pertaining to compliance with case filing
23 requirements, going forward, any individual plaintiff who seeks to initiate litigation may do so
24 initially through the BrownGreer Portal, which provides the means to submit basic individual
25 plaintiff information as well as an interactive form for the preparation of an NOA or an SFC. The
26

27 ¹ Household Number will be used synonymously with the Notice of Adoption Complaint Number.
28 This unique identifier will be used to capture the claims of all plaintiffs who file together under
one NOA/SFC per CMO 1, including individuals, as well as business entities.

1 BrownGreer Portal will also assign the Individual Plaintiff(s) with a Household Number, which
2 shall be used on the SFC and NOA of the Master Complaint.

3 **C. Amended Service Requirements for NOAs/SFCs**

4 The service requirements contained in CMO 1, which apply to service of SFCs and NOAs
5 are hereby amended to include the following. Each Direct Action Plaintiff who files and/or effects
6 service of an SFC and/or NOA after entry of this Order shall concomitantly serve the SFC and/or
7 NOA on BrownGreer by email to NBF_Service@browngreer.com.

8 **II. CASE MANAGEMENT ORDER TWO: LIABILITY DISCOVERY FROM**
9 **INDIVIDUAL PLAINTIFFS**

10 Each individual plaintiff whose case is coordinated in JCCP 4995 and who has not
11 provided CMO 2 responses to Plaintiffs' Liaison before entry of this Order shall complete and
12 upload to the BrownGreer Portal the CMO 2 Questionnaire within 30 days of either the entry of
13 this Order, or within 30 days of the entry of the order granting coordination of their case,
14 whichever is later in time. BrownGreer shall present to the Defendants and to Individual Plaintiffs'
15 leadership the responsive information in a CMO 2 report every sixty (60) days. The next CMO 2
16 report shall be due on January 14, 2019.

17 **III. DAMAGES INFORMATION FROM SUBROGATION PLAINTIFFS**

18 **A. Retained Individual Plaintiffs—Insurance Information Sharing**

19 Each Counsel or Law Firm with a case coordinated in JCCP 4955 shall submit within 10
20 days of the entry of CMO 5 a List of Individual Plaintiffs, whether filed or unfilled, who have
21 retained Counsel or Law Firm in conjunction with claims arising out of a fire that is subject to
22 JCCP 4955. This List shall include:

- 23 • The first name and last name of all adult members of each household (household
24 defined as a group of Individual Plaintiffs suffering a loss associated with the same
address);²
- 25 • The address of the loss location (street addresses only; P.O. Boxes and Parcel

26
27
28 ² To include business entity Direct Plaintiffs, where applicable.

Numbers are not acceptable);³ and

- The name of all known insurance carriers providing property insurance coverage to the household members.

Subrogation Plaintiffs shall provide a copy of the Complete List of Individual Plaintiffs to BrownGreer for import and matching to the existing BrownGreer Individual Plaintiff Database.

B. Individual Plaintiffs Retained After Entry of CMO 5 – Insurance Information Sharing

For cases retained after entry of CMO 5, each Counsel or Law Firm with a case coordinated in JCCP 4955 shall submit an updated complete List of Individual Plaintiffs, whether filed or unfilled, who have retained Counsel or Law Firm in conjunction with claims arising out of a fire that is subject to JCCP 4955 every sixty (60) days to BrownGreer. The List shall include:

- The first name and last name of all adult members of each household (household defined as a group of Individual Plaintiffs suffering a loss associated with the same address);
- The address of the loss location (street addresses only; P.O. Boxes and Parcel Numbers are not acceptable); and
- The name of all known insurance carriers providing property insurance coverage to the household members.

C. Subrogation Claim File Production Master Control Spreadsheet

Subrogation Plaintiffs shall independently conduct a “matching” project between the List of Individual Plaintiffs and the Subrogation List of Claims to identify all property insurance claims related to each of the Individual Plaintiff households. Wherever a match is identified, Subrogation Plaintiffs will endeavor to link the List of Individual Plaintiffs with the Subrogation claim information for each household, and with the unique Individual Plaintiff Control Number and/or the Household Number assigned by BrownGreer.

Subrogation Plaintiffs shall create an initial matching spreadsheet called “Claim File Production Master Control” (“CFMC”). The CFMC shall combine and link information from the

³ Where a property has no street address, Counsel or Law Firm shall provide the best available identifying information for that property.

1 List of Individual Plaintiffs, the Subrogation List of Claims and the BrownGreer Individual
2 Plaintiff Database as follows:

- 3 • Client information submitted by the Individual Plaintiff firms (client/household
4 member names, loss address, carriers);
- 5 • The corresponding BrownGreer Individual Plaintiff Control Number and/or
6 Household Number; and
- 7 • Insurance claim information matched to the Individual Plaintiff/Household,
8 including Name of Insured, Carrier Name, Claim Number, Date of Loss (as
9 reported to carrier), Loss Location Address, amount paid, open reserves (if any),
10 and the status of adjustment of the claim by the carrier.

11 Upon completion, the initial CFMC will be provided to BrownGreer for import into a
12 central data management system. The BrownGreer Portal will then become the central repository
13 for management of all Individual Plaintiff data, including any insurance claim data provided by
14 the Subrogation Plaintiffs. BrownGreer will provide the Subrogation Plaintiffs with access to the
15 BrownGreer Portal to facilitate ongoing matching between Individual Plaintiff and Subrogation
16 data.

- 17 • Subrogation Plaintiffs will update the paid and open reserves as well as claims
18 status for all claims matched to Individual Plaintiffs in the BrownGreer Portal
19 regularly, and no less frequently than every four (4) months.
- 20 • Upon completion of the initial matching process outlined above, Subrogation
21 Plaintiffs will update the carrier data reported to the BrownGreer Portal to provide
22 a breakdown of payments by coverage, to include payments under Building,
23 Contents/Business Personal Property, Alternative Living Expenses/Business
24 Interruption and Auto/Specialty. Once a coverage breakdown has been added to the
25 BrownGreer Portal, all updates going forward will include a breakdown by
26 coverage.

27 **D. Individual Plaintiff Insurance Claim File Production**

28 The Subrogation Plaintiffs will produce claim files to BrownGreer as follows:

- For any claim that has been matched to an Individual Plaintiff Household, the
Subrogating Plaintiff will produce the closed claim file to BrownGreer once the
claim has been closed for adjustment; and
- BrownGreer will upload the claim file to the BrownGreer Portal and alert counsel,
or the individual plaintiff (if pro se), by way of email notification, that counsel or
pro se plaintiff has twenty-one (21) days to review the insurance claim file and
object to its production and/or redact information from the production. As soon as
representing counsel or the pro se plaintiff marks the claim file as “review
complete”, the claim file will be made available to the Defendants through the
BrownGreer Portal. Plaintiff shall upload into the BrownGreer Portal the approved

1 version of the claim file for production to the Defendants. However, if no review is
2 performed or objection made within twenty-one (21) days of email notification,
3 then the insurance claim file will automatically be made available to the Defendants
4 through the BrownGreer Portal as provided by Subrogating Plaintiff.

5 **E. Access to the BrownGreer Portal**

6 Each Individual Plaintiff, Subrogation Plaintiff, and Defendant shall establish a secure
7 connection with the BrownGreer Portal by obtaining authorized user names and secure login
8 passwords to permit use of BrownGreer Portal by counsel.

9 Each Plaintiff shall continue to use the BrownGreer Portal to request, obtain, complete, or
10 upload any required data, and serve the appropriate CMO 1 and 2 compliance information online
11 (including uploading PDFs or other electronic images, photographs and videos of any records
12 required). Liaison Counsel for Individual Plaintiffs shall continue to work with BrownGreer to
13 ensure CMO compliance and will continue to view, search and download non-confidential
14 materials submitted to the BrownGreer Portal. Finally, the Court may establish a secure
15 connection with the BrownGreer Portal by obtaining an authorized user name and secure login
16 password to permit use of the BrownGreer Portal by the Court.

17 Except as set forth herein, Counsel for plaintiffs and each *pro se* plaintiff shall be
18 permitted to view, search and download on the BrownGreer Portal those materials submitted by
19 that Plaintiff and by Defendants relating to that Plaintiff. Plaintiffs' Co-Liaison Counsels shall
20 maintain administrative access co-equal with BrownGreer to manage data and to facilitate
21 communications consistent with the purposes of this order.

22 **F. CMO 1: NOA – Plaintiff-Specific Information.**

23 Each individual plaintiff shall be required to confirm the actual damage categories that
24 apply to that plaintiff's specific case. This confirmation is herein referred to as the "CMO
25 Compliance Information" and shall be submitted by each Individual Plaintiff to the BrownGreer
26 Portal. The parties have agreed to use the BrownGreer Portal to hold such information.

27 Each individual plaintiff whose case has been coordinated in JCCP 4955 before the entry
28 of CMO 5 shall submit the CMO Compliance Information to the BrownGreer Portal within 30
days of the entry of CMO 5. Each individual plaintiff whose case is coordinated in JCCP 4955

1 after entry of CMO 5 shall have 30 days from the entry of the order granting coordination of that
2 plaintiff's case in which to submit the CMO Compliance Information to the BrownGreer Portal.

3 Service of completed CMO Compliance Information shall be deemed to occur when the
4 submitting party has performed each of the steps required by the BrownGreer Portal to execute the
5 online submission of the materials, and the submitting party has received confirmation on screen
6 that the materials have been successfully submitted.

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9 **IT IS SO ORDERED.**

10 Dated:

11 Hon. Curtis E.A. Karnow
12 Judge of the Superior Court
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EXHIBIT B

MICHAEL A. KELLY (SB #71460)
mkelly@walkuplawoffice.com
KHALDOUN A. BAGHDADI (SB #190111)
kbaghdadi@walkuplawoffice.com
**WALKUP, MELODIA, KELLY &
SCHOENBERGER**
650 California Street, 26th Floor
San Francisco, CA 94108
Telephone: (415) 981-7210

FRANK M. PITRE (SBN 100077)
fpitre@cpmlegal.com
ALISON E. CORDOVA (SBN 284942)
acordova@cpmlegal.com
COTCHETT, PITRE & McCARTHY
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000

STEVEN SKIKOS (SB #148110)
sskikos@skikos.com
SKIKOS, CRAWFORD, ET AL.
1 Sansome Street, Ste 2830
San Francisco, CA 94104
Telephone: (415) 546-7300

ON BEHALF OF DIRECT PLAINTIFFS

EVAN R. CHESLER (*pro hac vice*)
echesler@cravath.com
TIMOTHY G. CAMERON (*pro hac vice*)
tcameron@cravath.com
KEVIN J. ORSINI (*pro hac vice*)
korsini@cravath.com
CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, NY 10019
Telephone: (212) 474-1000

ON BEHALF OF DEFENDANTS

CRAIG S. SIMON (SB #78158)
csimon@bergerkahn.com
BERGER KAHN, A Law Corporation
1 Park Plaza, Suite 340
Irvine, CA 92614
Telephone: (949) 474-1880

ON BEHALF OF SUBROGATION PLAINTIFFS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

Coordination Proceeding
Special Title (Rule 3.550)

CALIFORNIA NORTH BAY FIRE CASES

JCCP No. 4955

**STIPULATION AND [PROPOSED] CASE
MANAGEMENT ORDER 6 RE:
PREFERENCE CASE PROTOCOL**

**Assigned for All Purposes to:
Hon. Curtis E.A. Karnow, Dept. 304**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The parties, by and through Individual and Subrogation Plaintiffs' Lead and Liaison Counsel and Counsel for Defendant PG&E, hereby reach the following stipulation as to the handling of preference trials in the North Bay Fire Litigation.

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So stipulated:

WALKUP, MELODIA, KELLY & SCHOENBERGER

MICHAEL A. KELLY
Attorneys for Individual Plaintiffs

BERGER KAHN

CRAIG SIMON
Attorneys for Subrogation Plaintiffs

CRAVATH, SWAINE & MOORE LLP

KEVIN J. ORSINI
Attorneys for Defendants Pacific Gas & Electric
Company and PG&E Corporation

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EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Coordination Proceeding
Special Title (Rule 3.550)

CALIFORNIA NORTH BAY FIRE CASES

JCCP No. 4955

**STIPULATION AND [PROPOSED] CASE
MANAGEMENT ORDER 6 RE:
PREFERENCE CASE PROTOCOL**

**Assigned for All Purposes to:
Hon. Curtis E.A. Karnow, Dept. 304**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

This Case Management Order shall govern all cases filed in or transferred to California North Bay Fire Cases, JCCP 4955, including all cases currently in this proceeding and any cases subsequently added to this proceeding. The Court anticipates, given the large number of filings in this JCCP and the factual nature and complexity of the claims at issue, that multiple plaintiffs may be interested in pursuing a preferential trial setting. The purpose of this Case Management Order is to establish a preference case protocol to facilitate the exchange of information related to cases potentially eligible for preferential trial setting.

The Court hereby Orders as follows:

1. A Preference Committee for Individual Plaintiffs is hereby established to review potential preference cases and advise the submitting Plaintiff's counsel as to the viability and sequence of any potential filings. The Preference Committee shall consist of the following members of the Individual Plaintiffs' Executive Committee and shall report to (Co-Lead and Co-

Liaison Counsel): Thomas Brandi, Amy Eskin, Max Schuver, Mary Alexander, Allison Cordova, Angela Ja Chun, Matt Skikos, Joanna Fox, Steven Berki, and Ahmed Diab.

2. The Preference Committee shall meet regularly and report to Co-Lead and Co-Liaison counsel for Individual Plaintiffs and shall be available for consultation as a group with any individual plaintiff's counsel. For this purposes of compliance with this Order, the Preference Committee obligations are to all plaintiffs in the litigation and the litigation as a whole.

3. The Preference Committee shall be responsible for meeting and conferring with the defendants regarding potential preference cases including briefing scheduling, setting of hearings, and coordination of discovery. These meet and confer efforts with Defendants will also include the Attorney for the Plaintiff moving for Preference.

4. The Preference Committee shall submit to all counsel a preference questionnaire which shall be completed by the submitting Plaintiff's counsel who seeks to present a case to this Court for preferential trial setting. Given the large number of cases potentially eligible for preferential setting, counsel for any individual plaintiff seeking preference shall complete the preference questionnaire and provide it to the Preference Committee.

5. Any plaintiff's counsel who, at any time, represents a Plaintiff that has a good faith basis for asserting entitlement to a preferential trial setting under Code of Civil Procedure § 36 must provide written Notice to the Preference Committee of their potential claim of preferential trial setting eligibility at least 21 days before a motion for preference can be filed. At the time this Notice is served, the submitting Plaintiff's counsel shall also produce to the Preference Committee the following: (a) Grounds for Preference – A written statement setting forth in detail the grounds for preferential trial setting and the facts supporting preference including the name of the plaintiff; (b) Records – Any medical and/or other records which the Plaintiff moving for Preference intends to submit to the Court to support the request for preferential trial setting, which will be uploaded on a secure document portal managed by Brown Greer to maintain security; (c) Declarations – Any and all declarations in support of the request for preferential trial setting (d) a completed CMO Compliance statement as required by CMO 5 uploaded to the BrownGreer portal and (e) a completed preference questionnaire as set forth in paragraph 4 above. If the Plaintiff

1 moving for Preference has exigent circumstances that warrant an expedited process, these
2 circumstances are to be presented to the Preference Committee at the earliest opportunity. If good
3 cause exists, the attorney for the Plaintiff moving for Preference, Lead Plaintiffs' Counsel, and
4 Defendants' Counsel will meet and confer as soon as practical.

5 6. To the extent that a proposed plaintiff preference request has a corresponding
6 Subrogation claim, Subrogation Leadership will be included and consulted as well.

7 7. Upon receipt of Notice(s) of potential claim(s) for preferential trial setting, the
8 Preference Committee shall review and confirm that each request is complete and compliant with
9 the preference protocol pursuant to C.C.P. § 36 and ready for meet and confer with Defendants.
10 The Preference Committee shall communicate the findings of their review to the submitting
11 Plaintiff's Counsel within 7 days of receipt of Notice.

12 8. Once a review of a request for preferential trial setting is deemed complete,
13 pursuant to paragraph III above, the Preference Committee, or the submitting Plaintiff's Counsel if
14 s/he disagrees with the Preference Committee's findings, shall provide Defendants with Notice
15 regarding the preferential trial setting request(s) and the supporting materials to be submitted with
16 the anticipated Preference motion(s) including any medical records and /or declarations that will
17 be submitted. Plaintiffs and Defendants shall meet and confer within 7 days regarding the briefing
18 and potential deposition schedule for each request for preferential trial setting. Any unresolved
19 disputes amongst the parties regarding preferential trial settings will be decided by the Court upon
20 the filing and hearing of a Motion for Preferential Trial Setting pursuant to C.C.P. § 36.

21 9. Counsel for the plaintiff bringing the preference motion shall be in compliance with
22 the CMOs of this Court.

23 10. After the procedure followed in this Preference Protocol is completed, any attorney
24 representing a Plaintiff in this case may proceed with the filing of a motion for preference under
25 California Code of Civil Procedure section 36 if that attorney believes it is appropriate to do so
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27 **IT IS SO ORDERED.**
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Dated:

Hon. Curtis E.A. Karnow
Judge of the Superior Court

EXHIBIT C

GERALD SINGLETON (SBN 208783)
TERRY SINGLETON (SBN 58316)
GARY LoCURTO (SBN270372)
SINGLETON LAW FIRM, APC

115 West Plaza Street
Solana Beach, CA 92075

Phone: (760) 697-1330

Email: gerald@slffirm.com
terry@terrysingleton.com
gary@slffirm.com

JOHN F. McGUIRE, JR. (SBN 69176)
BRETT J. SCHREIBER (SBN 239707)
THORSNES BARTOLOTTA McGUIRE LLP

2550 Fifth Avenue, 11th Floor
San Diego, California 92103

Phone: 236-9363 Fax: (619) 236-9653

Email: mcguire@tbmlawyers.com
Fusselman@tbmlawyers.com
Schreiber@tbmlawyers.com

Counsel for Individual Requesting Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Coordination Proceeding
Special Title (Rule 3.550)

CJC-17-004955
JCCP Case No. 4955

CALIFORNIA NORTH BAY FIRE CASES

**CASE MANAGEMENT CONFERENCE
STATEMENT FOR CERTAIN
INDIVIDUAL PLAINTIFFS FILED
DECEMBER 26, 2018**

Date: December 28, 2018
Time: 3:00 p.m.
Dept: 304
Judge: Hon. Curtis E.A. Karnow

TO THE COURT, ALL PARTIES, AND ATTORNEYS OF RECORD:

The Individual Plaintiffs represented by the attorneys listed above ("Requesting Plaintiffs") hereby submit the following to be included in the Joint Case Management Conference Statement ("Joint CMS") filed December 21, 2018. In sum, and for the reasons set forth below, Requesting Plaintiffs seek leave and/or request the following:

//

1. A trial date for the Sulphur Fire;
2. An order granting Requesting Plaintiffs the right to conduct independent discovery on behalf of Preference Plaintiffs;
3. A separate litigation track as to all fires; and
4. The right to file a Motion to Compel access to the physical evidence and reports generated by Cal Fire in connection with all 2017 North Bay Fires.

I.

INTRODUCTION/COMPLIANCE WITH MEET AND CONFER REQUIREMENTS

Undersigned counsel has met and conferred with counsel for PG&E, and with Leadership Counsel for Individual Plaintiffs (“Leadership”), prior to the instant filing. On or about December 16, 2018, Undersigned Counsel communicated with both Counsel for PG&E and Leadership, informing them of their intention to request Sulphur be set for trial sometime in June 2019. PG&E and Leadership both expressed opposition to the idea. On December 17, 2018, Leadership issued a Cease and Desist letter direct towards Undersigned Counsel, claiming various violations of Court Orders. Undersigned counsel categorically denies any violation of any of the directives of this Court and issued the attached response on December 18, 2018. Undersigned Counsel sent a follow up correspondence to Leadership and Counsel for PG&E on December 19, 2018, further outlining the issues addressed in the instant filing, in an effort to be completely transparent and continue the meet and confer process. This final effort proved futile and the parties unfortunately were unable to find any common ground. As such, Requesting Plaintiffs have satisfied the requirement to meet and confer regarding the issue raised herein.

II.

RESPONSE TO ISSUES RAISED BY THE COURT IN CMO NO. 3&4 AND REQUEST TO SET A TRIAL DATE FOR THE SULPHUR FIRE

In response to CMO 3, Requesting Plaintiffs submitted a supplemental filing requesting the Court set Sulphur for trial first. In CMO 4 the Court indicated Requesting Plaintiffs did not “provide all the data I requested in my earlier CMC order.” Accordingly, Requesting Plaintiffs provide this information herein and respectfully renew their request to set a trial date for the Sulphur Fire;

1 however, this request differs from the prior request in that it is being made only on behalf of
2 Plaintiffs represented by undersigned counsel.

3 Set Forth below is Requesting Plaintiffs' attempt to provide the court with the information
4 requested in CMO 3, along with the general premise of why Sulphur should be set for trial.

5 ***Trial setting. The parties should propose a trial with this detail, for each trial proposed:***

- 6 • **Which fire (Tubbs, Atlas, etc.). Explain the choice, if the parties disagree.**

7 Requesting Plaintiffs believe the Sulphur Fire should be tried as soon as it is ready. In terms
8 of liability, Sulphur is the most straightforward of all the North Bay fires. The Sulphur Fire does not
9 involve vegetation management issues and the widely held belief amongst all Plaintiffs is the fire
10 was caused by a snapped pole. Accordingly, it will be a very streamlined trial and will not require as
11 much written discovery, depositions, or experts as the other more complex fires.

12 If Requesting Plaintiffs can obtain the Cal Fire reports and inspect the evidence collected by
13 Cal Fire (discussed *infra*), Undersigned Counsel is confident this case will be ready for trial by June
14 10, 2019. Requesting Plaintiffs are not asking the Court to change the trial date for the Atlas Fire
15 (which currently is set for trial on September 23, 2019) and are eager for the Atlas trial to go
16 forward. Rather, Requesting Plaintiffs are asking that the Sulphur trial (which should last 14-18
17 court days) be completed in June. Since there is no shortage of capable lawyers on both sides who
18 can handle the work up for both trials, a trial in June on the Sulphur case will not prevent the Atlas
19 case from going forward as scheduled on September 23.

20 Finally, as addressed in prior filings, there is a significant human element involved here. The
21 hundreds of people who lost their homes in the Sulphur Fire (Cal Fire determined that 162 structures
22 were destroyed) are hurting. A significant number of those who lost their homes in the Sulphur Fire
23 were renters. Most were uninsured, and many are suffering extreme hardship (including
24 homelessness) while they wait for their cases to be resolved. Many other plaintiffs are significantly
25 underinsured, and cannot afford to rebuild their home until they settle or try their cases against
26 PG&E. Under most insurance policies, a Plaintiffs' ALE benefits – the portion of an insurance
27 policy that pays for a rental while the insured's home is being rebuilt – will run out after two years.
28 In short, Responding Plaintiffs believe the foregoing trial schedule is necessary to avoid prejudicing

the multitude of individuals who are uninsured and underinsured.

- **Number of plaintiffs.**

Approximately 5-10 cases per trial, totaling 8-15 individual plaintiffs.

- **Key characteristics of each plaintiff (e.g. the case includes wrongful death, or type of damage (e.g., agricultural); or presents a key issue [in which case this issue should be cited]; or plaintiff is selected randomly.**

Responding Plaintiff's anticipate submitting Plaintiffs for trial which represent the full picture of injuries, losses, and/or damages, which are as follows:

1. Complete primary home loss
2. Partial home loss
3. Commercial loss
4. Raw land loss (no dwelling/structure) rental loss
5. Smoke and soot damage
6. Evacuation only injuries (including emotional distress for those who fled their homes in fear for their lives.)

When and how each plaintiff will be identified, and if a series of backup plaintiffs whose cases present similar characteristics will be identified.

The parties will work collaboratively to identify the appropriate representative Plaintiffs and complete the process no more than 120 days prior to trial.

Each Plaintiff will represent the holder of a type of claim that arises from one of the above categories. Plaintiffs' counsel will provide defendant with a list of three or four suitable individuals which fit into one of the above categories who are fit to serve as a representative trial plaintiff, with supporting documentation to validate their selection. Plaintiffs and defendant can then collaboratively select two or three individuals in each category to make certain as the trial date approaches, should any individual claim be settled another suitable plaintiff holding the same type of right or claim can replace that individual. In the event the parties cannot reach an agreement on the proposed representatives, the parties would bring the matter before the Court for final decision.

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- Estimated number of witnesses, with very brief descriptions of their testimony (e.g. expert on topic X, plaintiff on damages, PG&E witness on topic Z, etc.).

Below is an estimate of the types of witnesses, what they will testify to, and an estimate of the length of testimony.

PG&E WITNESSES	
SUBJECT: Training & Qualifications of PG&E and/or Third Party Equipment	
<u>WITNESS</u>	<u>TIME ESTIMATE</u>
• PG&E PMK Regarding Pole Inspection and Risk of Pole Failure	1.5 Hours
• Supervising Equipment Inspection Manager: To Establish Insufficient Inspection and Maintenance Protocol (1-2 Witnesses)	3.0-3.5 Hours
• PG&E Quality Control Project Manager(s) to Establish Knowledge of Deficiencies in Equipment Inspection Systems.	3.0 -3.5 Hours
	Total Hours 7.5-8.5

PG&E WITNESSES	
Subject: Failure of PG&E Managing Agents to Manage Wildfire Risk	
<u>WITNESS</u>	<u>TIME ESTIMATE</u>
• PG&E Director Risk Management For Re: Equipment Maintenance	3.0-3.5 Hours
• PG&E Director Risk Management to Establish Process for Identification & Removal/Repair of aging or defective Poles/Equipment.	3.0-3.5 Hours
• PG&E Operations Manager to Establish Historical Process for determining when Poles/Equipment should be replaced.	3.0-3.5 Hours

1	• PG&E Program Manager(s) to Establish Continued Failures for Managing Wildfire Risk. (1-2 Witnesses)	3.0-3.5 Hours
2		
3	• PG&E Program Managers For Public Safety & Reliability ("PS&R").	2.0-2.5 Hours
4		
5	• PG&E Manager for Governance & Support re: Budgets for Pole/Equipment Inspection.	
6		
7		Total Hours 14-16.5
8	PG&E WITNESSES	
9	<u>WITNESS</u>	<u>TIME ESTIMATE</u>
10	• PG&E PMK re: Role & Responsibility of Emergency Operations Center Activated On or Before October 5, 2017 to Monitor Events Leading Up To Fire.	3.0-3.5 Hours
11	• PG&E PMK re: Policy, Practice & Procedure for Monitoring Weather Conditions in Advance of This Incident.	2.5-3.0 Hours
12		
13	• PG&E PMK re: Policy, Practice Or Procedures For DeEnergizing Lines, Historical Background Regarding Any Evaluation of This Risk Prevention Measures Prior to This Incident.	3.0-3.5 Hours
14		
15		Total Hours: 8.5-10
16	EXPERTS	
17	<u>WITNESS</u>	<u>TIME ESTIMATE</u>
18	• Plaintiffs' Expert re: Birds and Woodpecker Damage.	3.0 Hours
19	• Plaintiffs' Expert re: Electrical Accident Investigation, Contact & Causation.	3.0 Hours
20	• Plaintiffs' Expert re: Fire Cause and Origin.	3.0 Hours
21	• Plaintiffs' Expert re: Quality Assurance Sampling and Audit Process.	3.0 Hours
22	• Plaintiffs' Expert re: Risk Management Standards for Wildfire Prevention and Mitigation Measures.	3.0 Hours
23		
24		Total Hours 15

- **Estimated number of days for trial, accounting for cross examination of witnesses by all counsel who would have reasons to do so.**
 - 14-18 court days

1 • **Proposed trial date.**

2 ○ June of 2019

3 • **Proposed county for trial.**

4 Requesting Plaintiffs suggest Sulphur be tried in the City and County of San Francisco.

- 5 • **While some parties have asked for trial in this Dept. 304, if the Department's trial**
6 **calendar does not allow a trial in or around the date proposed, state alternative (e.g.,**
7 **trial in different county; trial judge assigned by the Presiding Judge of this Court on**
8 **the date of trial {master calendar approach}, etc.).**

9 If this Department is unavailable on the date requested, Requesting Plaintiffs request the case
10 be assigned to the Presiding Judge of this Court for assignment on the Master Calendar.

11 **III.**

12 **REQUEST TO CONDUCT DISCOVERY DIRECTLY**

13 **AFTER PREFERENCE MOTION IS GRANTED**

14 Requesting Plaintiffs filed their preference motion on December 4, 2018, and to date there
15 has been no opposition filed. As such, undersigned counsel anticipate this Court granting the
16 motion, which will in turn trigger the 120-day statutory timeframe to prepare for trial.

17 The current structure of filtering all discovery through Leadership is unworkable given this
18 time frame and will only serve to delay counsel's ability to swiftly conduct all necessary discovery
19 prior to trial. Under the current structure, if any counsel who is not part of leadership wishes to
20 conduct any discovery, it must submit its proposals to leadership for approval. If leadership denies or
21 ignores the request, counsel has a right to seek leave of court. This process is far too time
22 consuming given the shortened period to complete discovery in a preference case. As such,
23 undersigned counsel respectfully requests the right to independently conduct discovery.
24 Undersigned counsel will of course review all discovery which has been propounded to make sure
25 they do not duplicate any of Leadership's prior efforts. Undersigned Counsel was the head of the
26 Lobo discovery committee, and does not anticipate this will pose any problem.

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IV.

REQUEST FOR SEPARATE TRACK

As this Court is aware, since the inception of this coordinated proceeding, there have been significant differences and disputes which have emerged between Undersigned Counsel and Leadership. When the current structure was agreed to, such irreconcilable differences were not anticipated. Circumstances have drastically changed and as such, Undersigned Counsel is left with no choice but to petition the Court for a separate litigation track.

There are clearly fundamental differences between the two factions' approaches to resolving their respective clients' claims. Despite the parties' efforts, it seems a common ground cannot be reached. As addressed in prior filings and hearings, it is Undersigned Counsel's position that these cases should be tried as they are ready. Many of Undersigned Counsel's clients are in dire straits financially and need these cases to move along at a quicker pace.

In addition to the philosophical and strategic differences between the two groups, Undersigned Counsel has been unable to meaningfully participate in the litigation process. Since the coordination of these proceedings, Leadership has consistently failed to include Undersigned Counsel in discussions and decisions which substantially impact all Plaintiffs. Additionally, Leadership continues to level unsupported claims of misconduct, going as far as to completely refuse to communicate with anyone from Undersigned Counsel's office. This situation has been made more untenable given the Leadership's instance that counsel for Requesting Plaintiffs cease all contact with defense counsel, even as to matters that affect only Requesting Plaintiffs.

Simply stated, Undersigned Counsel is unable to meaningfully participate in the coordinated proceedings and represent their clients as they see fit. As such Requesting Plaintiffs respectfully request the Court grant Requesting Plaintiffs a separate litigation track. If the court is unwilling to grant this request at this time, Requesting Plaintiffs respectfully request the opportunity to fully brief this issue in a noticed motion.

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V.

**REQUEST TO FILE A MOTION TO COMPEL CAL FIRE
REPORTS AND TO INSPECT PHYSICAL EVIDENCE**

All parties will certainly agree the Cal Fire Reports along with the ability to inspect physical evidence are the most important tools either party has to further the discovery process. Without access to this information, all parties are severely limited in what they can do to push these cases towards resolution. As detailed in the attached motion, to date, the parties have been unable to obtain all the unredacted reports for each fire and have not been granted access to inspect any physical evidence.

The attached motion sets forth in great detail the timeline of events in Plaintiffs' efforts to obtain the reports; however, the following is a brief synopsis of the timeline of events leading up to this request:

On June 8 and 12, 2018, Lead Counsel for the Individual and Subrogation Plaintiffs served subpoenas on Cal Fire for physical evidence it gathered and the completed, unredacted reports it generated in connection with its investigations of the Atlas, Honey, Lobo, McCourtney, Nuns/Abode/Norrbom/Pythian/Partrick, Pocket, Blue, and Sulphur fires. These subpoenas demanded production on dates between June 29 and July 9, 2018. Cal Fire produced unredacted copies of its reports (including attachments) for the first group of fires.

With regard to the second group of fires, Cal Fire asked Plaintiffs to withdraw their subpoenas until the various district attorneys decided whether to press charges. As a compromise, Plaintiffs proposed these reports be produced subject to the Protective Order entered in this case.

On July 5, 2018 Cal Fire informed Plaintiffs that, "all of the respective DA's Offices have requested that the Group 2 fire investigation reports not be shared with anyone else," and that, "Cal Fire intends on making every effort to honor this request of the DA's Offices."

On July 9, 2018, Plaintiffs requested legal authority from Cal Fire to support its position.

On July 20, 2018, Cal Fire advised Plaintiffs that Cal Fire was still in the process of ascertaining the basis for the district attorneys' request that Cal Fire withhold the subpoenaed materials from Plaintiffs.

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1 Further meet and confer efforts were unsuccessful, and on August 9, 2018, Lead Counsel for
2 the Individual and Subrogation Plaintiffs filed their Motion to Compel Production of Cal Fire
3 Reports.

4 On August 23, 2018, Cal Fire filed its Opposition to Plaintiffs' Motion to Compel.

5 On August 30, 2017, Lead Counsel for Plaintiffs withdrew the Motion to Compel, stating
6 certain individuals were in the process of finalizing a cooperative means of accessing the unredacted
7 reports and access to physical evidence on or shortly after October 8, 2018.

8 October 8th came and went without Plaintiffs being granted access to the subpoenaed
9 materials.

10 CMO 1 does not set forth any rules or procedures expressly applicable to Requesting Plaintiffs'
11 instant request. CMO 1 does, however, provide:

12 Should any Plaintiff or law firm after consultation with the Individual Plaintiffs' Lead
13 Counsel and the Subrogation Plaintiffs' Lead Counsel believe that they need to
14 propound liability discovery that has not been or will not be propounded by the
15 Individual Plaintiffs' Lead Counsel or the Subrogation Plaintiffs' Lead Counsel, such
16 Plaintiff or law firm may seek an order from the Court allowing such discovery to be
17 propounded. Otherwise, no Plaintiff may serve separate liability discovery. (CMO 1
18 at 15-16.)

19 Accordingly, Requesting Plaintiffs hereby seek leave of Court to file the attached motion to
20 compel access to the physical evidence and reports generated by Cal Fire in connection with all fires.

21 IV.

22 CONCLUSION

23 For the foregoing reasons, Responding Plaintiffs request an order:

- 24 (1) Setting a trial in the Sulphur Fire case in June 2019 (preferably June 10, 2019);
- 25 (2) Allowing Undersigned Counsel to conduct discovery directly in the Lobo Fire
26 on behalf of Preference Plaintiffs;
- 27 (3) Granting Requesting Plaintiffs a separate litigation track, or in the alternative,
28 the opportunity to fully brief the matter; and

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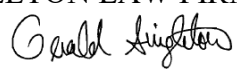
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(4) Allowing Requesting Plaintiffs to file the attached Motion to Compel access to the physical evidence and reports generated by Cal Fire in connection with all fires.

Respectfully submitted,

Dated: December 21, 2018

SINGLETON LAW FIRM, APC



By: _____
Gerald Singleton, Esq.
Terry Singleton, Esq.
Gary LoCurto, Esq.

Dated: December 21, 2018

THORSNES BARTOLOTTA McGUIRE LLP



By: _____
John F. McGuire, Jr.
Attorneys for Requesting Plaintiffs

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF SAN FRANCISCO) ss.:

4 ***California North Bay Fire Cases***
5 San Francisco Superior Court, JCCP No. 4955

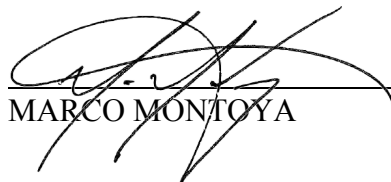
6 I certify that I am over the age of eighteen (18) years and not a party to the within action. I am an
7 employee of Skikos, Crawford, Skikos & Joseph LLP, and my business address is One Sansome
8 Street, Suite 2830, San Francisco, CA 94104.

9 On **December 24, 2018**, I caused to be served the following document(s) described as:

10 **JOINT SUBMISSION RE PROPOSED CASE MANAGEMENT ORDERS 5 AND 6**
11 **RE INDIVIDUAL CASES INCLUDING: CMO COMPLIANCE, CASE SPECIFIC**
12 **DISCOVERY, PRODUCTION OF CLAIM FILES, TRIAL SELECTION AND**
13 **PREFERENCE MOTIONS**

14 on interested parties in this action by submitting an electronic version of the document(s) via file
15 transfer protocol (FTP) to CaseHomePage through the upload feature at www.casehomepage.com.
16 [The document will be deemed served on the date it was uploaded to the website as indicated by
17 CaseHomePage system]

18 I declare under penalty of perjury under the laws of the State of California that the foregoing
19 is true and correct. Executed on **December 24, 2018** at San Francisco, California.

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21 MARCO MONTOYA
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